

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DEWAYNE SPAN, #269797,

Petitioner,

v.

CASE NO. 11-CV-13816
HONORABLE NANCY G. EDMUNDS

THOMAS BELL,

Respondent.

**OPINION AND ORDER DISMISSING DUPLICATIVE HABEAS CASE,
DENYING A CERTIFICATE OF APPEALABILITY, AND
DENYING LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL**

This is a habeas case brought pursuant to 28 U.S.C. § 2254. Michigan prisoner DeWayne Span ("Petitioner") challenges his convictions and sentences for second-degree murder, felon in possession of a firearm, and possession of a firearm during the commission of a felony which were imposed following a jury trial in the Wayne County Circuit Court in 2005.

Petitioner has already filed a habeas action challenging the same convictions with this Court, which is pending before another district judge. *See Span v. Bell*, Case No. 10-CV-13835 (Borman, J.). Accordingly, the instant action must be dismissed as duplicative. A suit is duplicative, and subject to dismissal, if the claims, parties, and available relief do not significantly differ between the two actions. *See, e.g., Barapind v. Reno*, 72 F. Supp. 2d 1132, 1145 (E.D. Cal. 1999) (internal citations omitted). Such is the case here. In fact,

it appears that Petitioner was attempting to file the instant pleadings as an amended petition, but the documents were filed as a new case. In any event, because Petitioner challenges the same convictions in both petitions and raises similar claims, the Court will dismiss this second action as duplicative. *See Harrington v. Stegall*, 2002 WL 373113, *2 (E.D. Mich. Feb. 28, 2002); *Colon v. Smith*, 2000 WL 760711, *1, n. 1 (E.D. Mich. May 8, 2000); *see also Davis v. United States Parole Comm'n*, 870 F.2d 657, 1989 WL 25837, *1 (6th Cir. March 7, 1989) (court may dismiss habeas case as duplicative of pending case when the second petition is essentially the same as the first).

Accordingly, the Court **DISMISSES** the instant case as duplicative. This dismissal is without prejudice to the habeas petition filed in Case No. 10-CV-13835. The Court further **DIRECTS** the Clerk's Office to re-file the pleadings submitted for this case in Case No. 10-CV-13835. This case is closed.

Before Petitioner may appeal this decision, a certificate of appealability must issue. *See* 28 U.S.C. § 2253(c)(1)(a); Fed. R. App. P. 22(b). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a district court denies a habeas claim on procedural grounds without addressing the merits, a certificate of appealability should issue if reasonable jurists would find it debatable whether the petitioner states a valid claim of the denial of a constitutional right, and reasonable jurists would find it debatable whether the court was correct in its procedural ruling. *See Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). Reasonable jurists could not debate the correctness of the Court's procedural ruling. Accordingly, the Court **DENIES** a certificate of appealability. The Court also

DENIES leave to proceed *in forma pauperis* on appeal as any appeal would be frivolous and cannot be take in good faith. See Fed. R. App. P. 24(a).

IT IS SO ORDERED.

s/Nancy G. Edmunds
Nancy G. Edmunds
United States District Judge

Dated: September 13, 2011

I hereby certify that a copy of the foregoing document was served upon counsel of record on September 13, 2011, by electronic and/or ordinary mail.

s/Carol A. Hemeyer
Case Manager